

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
JULY 11, 2012**

**CALL TO  
ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Greg Stevens, Charles Lapp, Frank DeKort, Gene Shellerud, Jim Heim, Jeff Larsen, Ron Schlegel and Robert Faulkner. BJ Grieve represented the Flathead County Planning & Zoning Office.

There were 12 people in the audience.

**APPROVAL OF  
MINUTES**

Schlegel made a motion, seconded by DeKort to approve the June 13, 2012 meeting minutes.

The motion passed unanimously.

**PUBLIC  
COMMENT  
(not related to  
agenda items)**

Hickey-AuClaire stated there had been several workshops and two public hearings before this hearing which had public comment periods. Anything which might be submitted during the meeting or comments on the Growth Policy which might be made during this public comment period could not be considered by the board. Anything planned to be submitted concerning the Growth Policy could be submitted to the Planning Office and would become part of the file. The board would not be able to consider comment tonight because it was not fair for the board to listen to anyone who came to talk tonight about the Growth Policy when another member of the public did not attend to make comments. If a member of the public was planning to make comments, the board could not consider them and the chair could call point of order. She wanted to make sure everyone knew the situation concerning public comments on the Growth Policy. She said 54 additional letters of public comment had been received by the planning office after the close of public comment on 6-13-12.

Grieve said they had 27 comments totaling 54 pages. Those were a part of the public record, they had been printed and included as a part of the public record, however they were not forwarded to the board and the board would not receive them at the meeting because they should not influence the discussion since the public hearing was closed.

Hickey-AuClaire said the board did appreciate the fact the members had come tonight and were a part of the process. She wanted to make sure they understood where the board was coming from and they could not consider public comment during this period for the Growth Policy. If they had anything else to comment on now was the time to speak.

Barb Miller, 220 Tamarack Woods Dr., made a statement concerning the Lakeside Neighborhood Plan. She gave a timeline of the approval of the plan, the lawsuit, the ruling of the judge on the lawsuit, and the fact there was nothing in the lawsuit which stopped the plan from being implemented. The judge had not lifted the preliminary injunction which was in place against the Lakeside Neighborhood Plan. She gave a history of what had happened since the judge's ruling, and the fact the injunction still stood and was in limbo. She invited any news people in attendance at the meeting to follow up on the story and figure out why the injunction had not been lifted.

Al Johnson, 789 Swan River Rd, asked procedural questions concerning how the repeal of the Growth Policy would be done.

Hickey-AuClaire said what they were working on now was an update of the Growth Policy. The board had not considered a repeal of the Growth Policy, they had asked Grieve what could be some of the repercussions if a repeal process went forward. They were not trying to start the process.

Johnson said his question was if there was a separate policy and procedure which needed to be followed in order to repeal the plan separate from the policy and procedure needed to update the plan.

Hickey-AuClaire deferred to Grieve.

Grieve said first of all, he would reiterate what Hickey-AuClaire said. All discussion regarding the repeal of the Growth Policy was born of a request of the Planning Board of Grieve to provide information on what a repeal of the Growth Policy would mean. It was couched as what is a Growth Policy, why do we even have one, what if it wasn't there. He had said he could prepare for the board a list of what it did and what it didn't do. He felt that was important to point out again. It had misunderstood that somehow, tonight's meeting was about repealing the Growth Policy and he didn't want anyone to have that impression. His

understanding was that the public hearing which was held was on the second final draft of the Flathead County Growth Policy. That was what was legally advertized as the purpose of the meeting. The public hearing was not on repealing the Growth Policy, therefore, if as the result of the board discussion led to further discussion of not adopting the update and repealing the Growth Policy, a separate process would need to be followed. A public hearing would need to be held because they would undo something which had been done which was the 2007 document. It was possible to repeal the document, but there would need to be a separate process.

Johnson asked if it would be the same process as if someone were to submit another amendment.

Grieve said typically to undo things, you look at the process by which it was done.

Johnson said that was what he would like to know.

Grieve said he did not know the answer conclusively, Flathead county had not ever repealed a Growth Policy to his knowledge, but it was reasonable conclusion that the same process that was followed to adopt something would be to repeal it. When an amendment was done to the Growth Policy, such as the Bigfork Neighborhood Plan, you follow a similar process as was done to create it.

Johnson thanked Grieve for his answer.

Joseph Ruffalo, 1112 Aleisha Lane, said he was a juror in a very big case recently. He commented how clarity was very important. The clarity of motions, findings of fact, things which pertained to what was permitted and what was not, and clear minutes were very important and helpful to jurors. He urged the board to follow the process, be very clear in their motions, be very clear in the documentation they create and don't be ambiguous. When the board was clear and unambiguous, they protected the county. He said it was difficult to be in the year 2012 and try to understand what someone in 2006 was thinking. He again urged the board to follow process, be clear in their motions, be clear in the documents they write and if they wanted to include something in the motion, make clear what document it was they were including. It was tough to be a juror when something wasn't clear. He said you can't get into trouble when

you follow the process.

Mayre Flowers, Citizens for a Better Flathead, said her comments were in response to an email from the Planning Director on June 15. She said in the email, in response to a question concerning documents on the website, clarified the document did not contain a comprehensive view of the revisions. She read a letter she wrote to the Planning Director concerning that issue. She spoke about counties in Montana who either did or did not have Growth Policies, the comparative length of the Growth Policies, and what was included in the Growth Policy.

**CONTINUATION  
OF BOARD  
DISCUSSION  
SECOND DRAFT  
OF GROWTH  
POLICY  
UPDATE**

Hickey Au-Claire said she reviewed the minutes for the 6-13-12 Planning Board meeting and summarized the last part of the meeting. She asked for a motion for approval or denial of the Growth Policy update.

**MAIN MOTION  
TO  
RECOMMEND  
APPROVAL OF  
THE GROWTH  
POLICY  
UPDATE**

Larsen made a motion seconded by Schlegel to recommend approval of the Growth Policy update to the Board of County Commissioners.

**BOARD  
DISCUSSION**

Hickey-AuClaire and Grieve discussed procedure.

Grieve reviewed the cover memo which was included in the board packet for the 6-13-12 meeting and what had happened at the meeting on what he provided to the board.

Hickey-AuClaire said she felt with all the information received, and following procedure, she asked if the board would be willing to answer a set of questions concerning the information received from the 6-13-12 meeting. She wanted to have it on record everyone had read the information and had done their duty for public.

Hickey-AuClaire asked Ron Schlegel if he had reviewed the written comment.

Schlegel said he had.

Hickey-AuClaire asked if he was present for the oral comment at the 6-13-12 Planning Board meeting.

Schlegel said yes.

Hickey-AuClaire asked what kind of consideration he had taken from the comments.

Schlegel said he had a lot to speak about during board discussion.

Hickey-AuClaire asked if anything stood out to him specifically.

Schlegel said the issue of water quality and the board being accused of not knowing the scientific results of water quality. He had a presentation for later on that issue.

Hickey-AuClaire asked DeKort if he had received the written comment.

DeKort said yes, he had.

Hickey-AuClaire asked if he had reviewed it.

DeKort said yes.

Hickey-AuClaire asked if he was present for the oral comments.

DeKort said yes he was.

Hickey-AuClaire asked what kind of consideration he had taken of the public comment.

DeKort said he gathered two main concerns from the comments. One was the elimination of policies; the second was the individual property rights section.

Hickey-AuClaire asked if anything else specifically stood out to him.

DeKort said those two issues were the ones which stood out in his mind and he was sure they would be discussed.

Hickey-AuClaire asked Shellerud if he had read the written comments.

Shellerud said yes.

Hickey-AuClaire asked if he was there for the oral comments.

Shellerud said yes he was.

Hickey-AuClaire asked what kind of consideration he took to the comments.

Shellerud said he was concerned about the number of people concerned about personal property rights and he was a little confused about how it had changed. He thought there were people who wanted to add to the personal property rights section. He wanted to deal with that.

Hickey-AuClaire asked if anything else specifically stood out to him.

Shellerud said no, just the volume of public comment. He asked where the people were when all the workshops were going on.

Hickey-AuClaire asked Stevens if he had received the written comment.

Stevens said yes, he did.

Hickey-AuClaire said she knew he was not at the meeting for the oral comments. Did he have an opportunity to review the DVD of the 6-13-12 meeting or did he look at the minutes.

Stevens said he watched the DVD.

Hickey-AuClaire asked what consideration he took of the comments.

Stevens said he read all the comments. There was some good information which he probably would re-review. He wanted to say he had been involved, he was the first chairman of the Growth Policy committee in 2002, prior to that he was president of the Kalispell-Flathead county joint planning board when they redid the master plan for the jurisdiction of the city of Kalispell and the surrounding area. He said they redid the master plan

with weekly meetings which were advertized, with public participation. He said part of the comments were about public participation. He said he hadn't been on this board for too long, just since the beginning of the year, but his experience had been the public participation in the update process had been very, very good relative to the other projects he had been involved in with Master Plans and Growth Policies. He said when they did the Kalispell-City County Master Plan, the public in attendance was basically Mayre Flowers for Citizens for a Better Flathead and Russell Crowder representing American Dream Montana, and that was about it at any of their meetings. He said there were 10 to 12 people in attendance at the meetings he had been to which more than at the original Growth Policy meetings were about five to six times. He gave a history of where the original board met and how many people were there. He felt the public participation for the update had been pretty darn good. He said there had been good input from both sides of the spectrum on this plan. He said a lot of the comments were not news to him. The issues were similar and had been for many years. He read some of the public comment which had been submitted at the 6-13-12 meeting concerning compact development versus dispersed development. He said any of the regulations came down to that split on the issue of what kind of development they wanted to follow. The issues hadn't changed. He said concerning water quality, he did not have the education or experience to make decisions on issues that the Department of Environmental Quality of the Flathead County Health Department was involved in. He was hesitant to devise new policies which may infringe on their expertise. He thought they had done a good job on their responsibilities. He said some of the policies which were debated in public comment as to if they were needed, were needed but not in the Growth Policy. They were needed by DEQ and the Flathead County Health Department. He said there was always an issue between personal property rights and dichotomy of 'smart growth' and dispersed development. They had never been able to resolve the different ideas of what property rights were. He felt if he owned the property, he owned the property rights to the property. He was not sharing the property rights. They were individual and they were specific to him. They were restricted on the bases of health, safety and general welfare, they were not shared property. He explained a dilemma he was in currently concerning the issue and the dichotomy which always was an issue concerning property rights. He felt the concerns with health and safety was easy to resolve because usually everyone

was able to identify those. The general welfare question was the one people could not agree on. He gave a history of how long he had lived in the Flathead Valley which was over 60 years and where he had lived during that time and the changes he had seen. He said the free enterprise system, which can't exist without the protection of private property rights had made all the residents of the Flathead Valley very fortunate people. He was interested in protecting private property rights because he thought they under laid the basis of the free enterprise system. He didn't feel, to quote a public comment, as 'an extreme, anti-government, political activist'. He had been involved in community affairs in the county for a long time and that classification did not fit him. He was going to support Larsen's motion to send the update forward with a recommendation of approval. He felt the process had been ok. From his experience with Master Plans and Growth Policies, there had been great public participation. He went on to summarize the fact with the original Growth Policy there had not been time to disperse to the public all the changes between the meetings. The public needed to be at the meetings with them to know what changes were being made. The public had the right to make all the public comment they wanted to and the board seriously considered all the input. In his opinion, the changes had been minor. The property rights change had 'jangled bells' with the crowd that liked to include communal property as part of property rights. Either way, one side was going to be upset. It was a dilemma which would not go away in the near future. He was in favor of the motion based on the fact the changes were minor in his view. If they were major changes, there was a process for that. If there was something which had been done which had not been identified, there was nothing saying they could not address it. Given the amount of work and public participation, he was in favor of forwarding this draft on to the commissioners with a favorable recommendation.

Hickey-AuClaire asked Lapp if he heard the oral comments.

Lapp said yes.

Hickey-AuClaire asked if he had received the written comments.

Lapp said yes and he had reviewed it.

Hickey-AuClaire asked what kind of consideration he had taken from the comments.

Lapp said he considered them. Fundamentally, there was a lot he did not agree with.

Hickey-AuClaire asked if there was anything else which stood out to him.

Lapp said there was, but would save his comments for board discussion because they were more or less just comments.

Hickey-AuClaire asked Larsen if he had received the written comment.

Larsen said yes he had.

Hickey-AuClaire asked if he had heard the oral comments.

Larsen said yes.

Hickey-AuClaire asked what kind of consideration he had taken from the comments.

Larsen asked if they were going to go through the long version of comments later.

Hickey-AuClaire said this time was a way to make sure they had established the board had taken the time to review the comments and they were committed to the community and she wanted to make sure that was clear for the record.

Grieve said for full disclosure, he and Hickey-AuClaire had discussed making sure it was crystal clear for the record that everybody in attendance had given consideration to the comments. If a member did not say anything for the whole meeting, at least at this point it was clear yes, they had reviewed it.

Larsen said he had quite a bit of stuff he wanted to go through. Yes he did go through every one of the comments they received. Obviously, there were a lot of people who had participated. On the property rights section which he was adamantly in favor of, there were a group of people who thought it should be stronger for property rights and a group of people who came in at the end who Citizens for a Better Flathead had sent out some alerts and had gotten their members riled up and they sent a bunch of

emails. A lot of them said the exact, same thing. He said they had a one paragraph statement which was obviously written by an alert email which had gone out. He didn't say that wasn't a valid comment but he understood the perspective of that group. His job was to listen to all the public comment. It was not a mob rules country. Our country was founded on protecting the right of the minority. If there was a valid comment from one person and a thousand disagreed, it didn't mean the one person's comment was thrown out. There were a lot of people who participated the whole time. They didn't have a leader who gave them talking points or send them an email, they spent a lot of time studying and he listened to their comments. The ones who showed up at the last meeting said the process was easy to follow, tons of opportunities for people to participate were given, and so he was disheartened and was not very happy at the last meeting when the board received 3 to 4 hundred pages of comments when there were all kinds of opportunities to comment before. He felt that was a disservice to the board. He had a right to believe the way he wanted, he was appointed to the board. If someone didn't like what he believed in, they could sign up and try to be appointed to the board as well. He didn't believe in smart growth. He felt it caused more harm than good. He would talk more about that when they were in board discussion. He said they received a lot of comments on water quality. He had a lot of experience in water quality, and waste water treatment. He listed his credentials. He said there were valid comments which were received, but there were other valid comments as well and he would bring up other studies in discussion. The main thing was, most of the issues were already taken care of by DEQ regulations. One of the other things which bothered him was if you looked at the original Growth Policy which was adopted; his signature was on that policy. He was chairman of the board when he signed his name to that Growth Policy. All through the time they were working on the document, they were told it was a non-regulatory document. Now there were court decisions saying it was a regulatory document. If they didn't believe him, look at the Citizen's for a Better Flathead lawsuit. They cited 6 or 7 neighborhood plans for why the Growth Policy was regulatory in their lawsuit. He felt that was a problem. He was concerned about the regulatory words when the document was written, but he let it go because it was not a regulatory document. The law said it was not a regulatory document. That was a game changer to him. There was a lot of public comment which asked the board to change the regulatory wording of the Growth Policy. It was not the board who decided

on their own to make those changes. People who showed up meeting after meeting after meeting asked them to fix the regulatory wording because of the result of the lawsuits. Just because a group at the end sent out 45 or 100 emails to the contrary, he didn't care because it was a valid comment made. He was considering all comments but he had to do the best that he felt he could for the county. There were concerns about water quality. They were all concerned about water quality. None of them wanted dirty water, but he knew working in the occupation he worked in, that the county had really good rules and regulations for water quality. He would talk about that more in board discussion. There were also issues brought up on stream setbacks. There was a pretty big public process on setting up the stream setbacks. It got to be a knockdown, drag out fight. He testified on the setbacks when it became an issue, he was not on the Planning Board at that time. He relayed what he presented and said the commissioners agreed with not implementing stream setbacks. That was one of the reasons he didn't have a problem with taking out that policy. The other policy was 8 foot to ground water which was not in compliance with DEQ regulations whatsoever. There were comments which stated the board changed that policy with no public information at all, the board had hundreds of people making public input that created that policy. That policy was not in the Growth Policy when it went to the county commissioners. The county commissioners created that 8 foot to ground water within five minutes of adopting the Growth Policy with absolutely zero, no public comment whatsoever. There was not any scientific study, or public comment in the record which supported it anywhere in the whole record. He went through the whole Growth Policy and every public hearing there was and could not find any support for the policy. He said not to sit there and tell him that was created by hundreds of public comment, because it was not. Those were some of the concerns he saw, there were other concerns he read in the comments that were overturning the Growth Policy. The way he saw it, they were barely working along the edges of the Growth Policy. They were working on some regulatory words. If the people were honest about when they came in there and said it was non-regulatory, then why were they so concerned about them changing one word in the Growth Policy from required to encouraged. He spoke about when they were first working on the Growth Policy, they were going to hire a consulting firm to help them. The board wrote the Growth Policy and the firm critiqued it when it was finished and said essentially, The Growth Policy the board had written had

goals and policies that could support one side or the other side. It would be pretty easy for someone to take out their set of goals and policies and make a lawsuit against anything they didn't like. That was not such a huge issue if it wasn't regulatory, but now it was a huge issue. It could be seen as it was looked at. That was where the concern came in for him. That was why when the public came in and said something had been a game changer for them, something needed to be done, he took that seriously. He took it seriously when he voted for the Growth Policy and he was told it was non-regulatory and now the Supreme court told him it was. Those were some of the concerns he had, he read all the comments. They had been accused of overturning the Growth Policy, they were going to get rid of the Growth Policy all together. All they had done was to ask Grieve to write a paper for the board to see what would happen if the Growth Policy was repealed. He said they had put a lot of time into the project, they bent over backwards to let the public be involved, and he wasn't very happy last time when he had been accused of all this stuff after putting in all the hours and hours of time, but there were more people to the public than Citizen's for a Better Flathead. There were other people in the public that needed to be listened to. Just because they could get their members to send a hundred emails did not mean they were the only members of the public. He wanted to make that clear.

Hickey-AuClaire asked Faulkner if he received the written comment.

Faulkner said yes, he did.

Hickey-AuClaire asked if he was there for the oral comments.

Faulkner said he was.

Hickey-AuClaire asked what kind of considerations he had taken from the comments.

Faulkner said he would not reiterate what had already been said, it had been pretty well covered. He would reiterate the fact there wasn't anyone on the board who wanted to drink dirty water. There could be sent 5,000 written comments with various scientific of how things affected water quality, but the fact was, none of them were going to be voting for dirty water. The other consideration he had was the issue of community rights. He had a real difficult time seeing community rights in the constitution.

That was just him, he was old fashioned.

Hickey-AuClaire said that also covered her next question. She asked Heim if he received all the written comment.

Heim said yes, he did.

Hickey-AuClaire asked if he was present for the oral comments.

Heim said yes, he was.

Hickey-AuClaire asked what kind of consideration he took from those comments and what stood out for him.

Heim said being last on the list, he didn't want to rehash everything over again. The things that came to mind for him were the reason they got into policy changes was from public input. The words were too regulatory; they needed to take a look at that. When they started the process they said they were only going to update data information and they weren't going to mess with policies and goals. Public input got them into changing those. Then the property rights issue was public input which stated there was too much emphasis on community property rights in the original version of the property rights section. So what resulted was a lot of public comment which resulted in Larsen submitting a total rewrite for the section. He supported the rewrite at the time; he had some concern about the last sentence. He thought it came out pretty heavily and controlling. The section of control conflicted with something else. He would still like to hear some of the board's comments before he made his decision, but personally, he didn't find the original version of the property rights section too bad. He thought it was quite enlightening as far as describing the complexity of property rights and how hard it was to actually come up with something in writing which would satisfy everyone. But through public input which supported Larsen's revision because it seemed simpler and he didn't really have a problem. He guessed some of the public comments in the stack they had to look at emphasized the word 'must' and those were the kind of words they were trying to take out. He would like to hear a little more discussion about the regulatory words. He felt they had had adequate public input along the way. Never the less, it was some input recently which got his attention. On the policies which were deleted, there were some really good regulations through DEQ, DNRC and some others, Environmental Health which had those

things covered, so whether that had to be flatly stated in the Growth Policy, he didn't know. Rules and regulations had to be based on the Growth Policy, so maybe it would be required in the Growth Policy. There were a couple of policies which were eliminated which they maybe should reconsider.

Hickey-AuClaire said she received the written comments. She was not going to lie; she didn't read every page of the information submitted by the Flathead Lakers. She did hear the oral comments. Concerning what kind of considerations she took from the comments, she definitely grouped them together. There were three groups she felt which were water quality, transportation, and overall not to change the Growth Policy. Had it been a learning process? She said absolutely and she was sure every one of them could sit and say; next time we should do this, or this. Most people did that. When you go through something, you are always criticizing yourself and saying I could have done this better or this might help the public understand better. Could the board have done that? Absolutely. She did feel they did to try always at every meeting make sure everyone got to talk as much as they wanted, and never limit their time. Could the board have gone out to the public? Maybe. Consistency was important too. Knowing the board was there every other week for the past 14 months or however long it was, they could come here and the board was there. Establishing consistency was good. It was neutral. Can everyone make every meeting? No, and she understood that. What always stood out to her, and Ruffalo's public comment supported this view was how can someone get into someone else's mind in 2007? It was the same thing. That was why she felt it was so important that the board was updating the Growth Policy because this process was going to be two years. If they moved forward, whatever way the commissioners moved forward, it was going to be another year. So then they were three years in and in two more years, it had to be updated again. If they didn't end it and then start the next update, they would be ten years out. Then they would be going back. How did they know what the people were thinking ten years ago and things changed so much. There had to be an ending because this could go on forever. When they voted and the Growth Policy went to the commissioners, who knew what they will do. They could say yes and they could scratch stuff out and say they want this instead. They didn't have to hold a public hearing, they didn't have to take any more public comments, they could go off the draft version before the board or they might send it back to the board and say no, they were not going to

approve it and they wanted the board to keep working on the update. She felt if they didn't keep moving forward, it would be ten years or fifteen years. People complained about what was in the Growth Policy now. Saying that the neighborhood plans they were 20 years out of date, or the Master plans are 16 or 20 years out of date, that was what was going to happen with the Growth Policy if not forwarded. Were they going to make everybody happy? Absolutely not. She did feel that everyone on the board wanted to take everyone's side and take that into consideration, not like they weren't going to listen to someone and take their comment. She took the process seriously. They tried to do their best and do what was right and legal. They were not lawyers and they were trying to do the best they could to follow the processes and do things right. Were they going to make mistakes? Absolutely. They might forget to say something, but they were not doing it by intentions. She wanted to make it clear that was where she was coming from. She was stating that for the record. They were trying and it was their role as the Planning Board to work on the Growth Policy. It was the law, it was their job and so that was what they were doing. Especially in this downturn they did not have meetings every week and that was what they were trying to do was to accomplish projects which needed to be done. She had other topics she would save for board discussion. She asked how the board would like to proceed and offered some suggestions.

Larsen said he would like to go around the table and state their comments.

***The board took a 10 minute break.***

Hickey-AuClaire reviewed the motion on the table to forward the second draft with a motion to recommend.

Schlegel said he took offence at some of the comments, especially concerning water quality. He was the 5<sup>th</sup> or 6<sup>th</sup> generation in Flathead County and being in the timber industry for his whole life he took a lot of pride in the things they had done. He reviewed studies, which he had present tonight, which concerned lakes, streams, riparian areas, and water quality, He said wording concerning the green zone was redundant. There were 12 other places which had rules and regulations concerning the issue. If any work was to be done, there were several departments you had to go through to get permits. His point was they were being redundant. They needed to make things

plain simple and clear. He was insulted by some of the comments. People could be nicer in their comments other than telling him he was dumbass. He didn't appreciate that. He apologized for the language. He listed the work he had done on another committee for rules which had been adopted by the DNRC. He had brought extra books for the board members. He explained the information the books covered. He had worked on water quality his whole life in the timber industry. He explained some of the regulations they had to follow. He summarized his qualifications.

DeKort said he was the member of the board who was not appointed by the commissioners but by the Flathead Conservation District. At the last conservation meeting they discussed water quality and getting some support in the Growth Policy for what the conservation district did. He said it was nice to get support, even though it might be redundant, countywide. Schlegel was a guest at that meeting. The board and Schlegel came up with a policy they both agreed on.

Grieve pulled up on the computer the policy DeKort was discussing for the board to view. He read the policy and explained what meeting the document came from and read what had been stricken.

DeKort understood there were problems with greenbelts.

**SECONDARY  
MOTION TO  
(reinstate and  
amend Policy  
41.3)**

DeKort made a motion seconded by Schlegel to reinstate and amend Policy 41.3 to read:

*Encourage maintaining and managing riparian areas in accordance with Montana State and Federal laws.*

**BOARD  
DISCUSSION**

Schlegel said it made it clear there were already rules and regulations in place.

Grieve and the board briefly discussed process.

The board discussed wording of the motion.

The board requested the information Schlegel offered.

The board discussed the pros and cons of the motion.

**ASK THE**

Lapp asked the question.

**QUESTION  
ROLL CALL  
VOTE TO  
(reinstate and  
amend Policy  
41.3)**

On a roll call vote, the motion passed 8-1 with Stevens dissenting.

**BOARD  
DISCUSSION**

Schlegel said, as far as public comment, you can attract more bees with honey, but it did get him fired up to craft a motion. He did want to point out he did compromise.

DeKort had nothing for discussion at this time.

Shellerud had nothing for discussion at this time.

Stevens wanted to reiterate the process had been a good process and the changes had been minor. He thought the product was good and he intended to forward with a favorable recommendation.

Lapp wanted to say it was aggravating to receive comments from people who really didn't know what they were commenting on apparently from an email urging them to comment. He mentioned comments on process, and not being able to see what had been changed. He said there were not a lot of changes.

Grieve and the board discussed what the public was able to see on the county website. They also discussed what was provided to Citizens for a Better Flathead and what happened at each meeting concerning the changes to the document.

Grieve reviewed at length for the board what was and was not available to the public concerning the Growth Policy, where it could be found, where the drafts were located, the quantity of information, the timeline for the process and what information had been available at each step and whether it was useful to have one document available containing all the changes which had been made. He spoke about how much progress he made in one hour putting together one document with all the changes. He clarified a misquote in the Daily Interlake concerning how many hours it would take to make a document containing all the changes.

Heim asked if the original version was on the website.

Grieve said it was and showed where it was located.

Grieve explained how the website would be updated once the Growth Policy had been adopted.

Lapp said a person should be reading the draft by itself and went on to explain why. He said they didn't change a lot from 2007. They would be reviewing for another update soon and legislative session decisions might be affecting the next update.

Stevens said he agreed with Lapp the draft was what it was. He talked about when it might be a benefit to have a document with changes but didn't think it needed to be done for the Growth Policy. He said there was a place for highlighting and strikeouts to be annotated but that was more for statute.

Larsen said the board followed the process. He spoke about newspaper articles from the Daily Interlake concerning the Growth Policy being regulatory. He spoke about history of the Growth Policy and how it was a vision document of what the people wanted in the county. He spoke about public comments concerning water and air quality and where the power of the board was limited. He also spoke about comments which accused the board of overturning the Growth Policy, and how the board had wanted to improve the information in the Growth Policy. He also discussed problems with the Growth Policy being considered a regulatory document and changes the commissioners had made to the Growth Policy without scientific backing. He also discussed in detail comments concerning the property right section and he explained how he modeled his suggestion to amend the property rights section in the Growth Policy. He also spoke at length about why the board needed site specific data. He felt the concerns were valid concerns, he felt they were addressed in the regulations and the members of the board should not to make decisions which were better left up to more qualified people especially concerning the issues of ground water, etc. He went on to talk at length about comments concerning septic systems and cited studies which compared public systems and individual septic systems and the overflow from both. He also said there were comments concerning smart growth. He went on to explain why he did not believe in the smart Growth philosophy. He said he tried to read every one of the public comments. He thought there were good comments and there were other comments which were the opposite of the first comments. There was a lot of public participation, the

board had gone way beyond what was required by the state law for a Growth Policy update and everyone had so many chances to participate and he enjoyed working with the board on the update.

Faulkner wanted to thank publicly Grieve's effort to put together a report concerning the pros and cons of doing away with the Growth Policy. He talked about the process being more than fair. He said the board had listened to public comment and read the comments submitted and most of it was repetitious. It was one person's idea again and again and again. He also said concerning the idea of having one document with every strikeout and change, what the public needed was what the document was originally and what the final update was. To go any farther than that was a waste of taxpayers' money on staff time. He thought they had been as fair as they could have been concerning public input. They needed to forward the update on to the commissioners.

Heim said the comment they were provided with were a lot of primers on property rights and the bill of rights. He wasn't comfortable with Larsen's revision concerning property rights especially the last sentence. He liked DeKort's suggestions contained in his letter April 15, 2012.

The board silently reviewed DeKort's letter.

The board and Grieve discussed at length the section of property rights and the phrase 'shall control', if the Growth Policy was regulatory, the impossible situation concerning whether it was regulatory or not given court rulings, and possible wording to address that issue. They also discussed in detail about what made something regulatory.

Heim liked the caveats at the bottom of the pages and the preface in the beginning which concerned the Growth Policy not being regulatory.

Stevens offered wording to explain why the statements concerning if the Growth Policy was regulatory or not were included in the policy. He was in favor leaving the section the way it was and moving on.

Larsen said this issue had been before the board three times. He was in favor of leaving the section the way it was as well.

**SECONDARY  
MOTION TO  
(Amend  
paragraph 2 in  
Property Rights  
section)**

DeKort made a motion seconded by Stevens to amend the middle paragraph in the property rights section the Growth Policy with the following wording:

*Individual private property rights guarantee a property owner's right to use his or her property as he or she wishes limited only by a reasonable, lawful indelible public need. The Montana Code's Act determines that in the formulation and administration of the planned use regulations, a local jurisdiction's Growth Policy must be followed. The local jurisdiction's actions must be in substantial compliance with its own Growth Policy. Therefore, any regulations that apply to be used on private property using this Growth Policy must meet the following requirements:*

**BOARD  
DISCUSSION**

None.

**ASK THE  
QUESTION**

Larsen asked the question.

**SECONDARY  
MOTION TO  
(Amend  
paragraph 2 in  
Property Rights  
section)**

On a roll call vote the motion failed 4-5 with Larsen, Hickey-AuClaire, Schlegel, Stevens and Lapp dissenting.

**SECONDARY  
MOTION TO  
(Strike the last  
sentence in  
paragraph 2 in  
Property Rights  
section)**

Heim motioned and DeKort seconded to strike the last sentence in the paragraph which read: In the event of a conflict between the provisions in this part and any other provision in the Growth Policy and its amendments, this part shall control.

**BOARD  
DISCUSSION**

The board discussed at length why there was a survivability clause in this section and not in any other section in the Growth Policy and the pros and cons of the sentence, if the change was minor and if it was a well balanced view of property rights.

**ASK THE  
QUESTION**

Larsen asked the question.

**SECONDARY  
MOTION TO**

On a roll call vote, the motion failed, 3-6 with Lapp, Stevens Larsen, Schlegel, Faulkner and Hickey-AuClaire dissenting.

*(Strike the last sentence in paragraph 2 in Property Rights section)*

**BOARD  
DISCUSSION**

Heim was in favor of leaving in the wording which stated the Growth Policy was not regulatory.

Hickey-AuClaire spoke about a lot of comments to leave the document as it was, why so many people had come in at the last minute to comment, how the new members had worked with the board, how things should be clarified before the next update on how things were going to be reviewed and posted on the website. The board was learning how to do things better. She also discussed comments concerning transportation.

Hickey-AuClaire asked Grieve if he had anything else to add.

Grieve spoke about public comment which was received after the close of the public comment section of the hearing on 6-13-12. He also talked about appendix A and where it was posted on the website. He then talked about what process needed to be followed from this point and read the resolution for approval.

The board and Tara Fugina, county attorney, offered different wording for the resolution.

The board and Grieve briefly discussed process.

The board and Grieve discussed at length a comment concerning the Chamber of Commerce in the Growth Policy and what that affected.

Grieve again discussed process and read the resolution again.

Fugina, Grieve and the board discussed the wording of the resolution.

**ROLL CALL  
VOTE TO  
RECOMMEND  
APPROVAL OF  
THE GROWTH  
POLICY**

On a roll call vote, the motion passed 8-1 with DeKort dissenting.

## **UPDATE**

### **BOARD DISCUSSION**

Grieve left the meeting to print off the resolution for the board to sign.

DeKort asked if there was any other business to discuss.

Hickey-AuClaire said no.

The board waited for Grieve to return with the resolution to sign.

Grieve returned with the resolution to sign.

The board signed the resolution.

Hickey-AuClaire clarified the process from this point with Grieve and Fugina.

Grieve said it was an honor to serve the board in the capacity the office did. He was proud of the process and board and the headaches the board put up with and they were volunteers.

### **OLD BUSINESS**

None.

### **NEW BUSINESS**

None.

### **ADJOURNMENT**

The meeting was adjourned at approximately 9:10 pm. on a motion by DeKort. The next meeting will be held at 6:00 p.m. on August 8, 2012.

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Marie Hickey-AuClaire, Chairman

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Donna Valade, Recording Secretary

*APPROVED AS SUBMITTED/CORRECTED: 8 / 8 / 12*